

March 7, 2019

The Honorable David Cicilline
Chairman
Subcommittee on Antitrust, Commercial, and
Administrative Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial, and
Administrative Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

First, I would like to applaud the House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law for convening the upcoming hearing regarding the proposed merger of T-Mobile and Sprint.

One issue that I believe merits the Subcommittee's attention is T-Mobile's anticompetitive "Out-of-Plan Program," which is designed to get a subset of its subscribers to stop making calls— calls to run their businesses, calls to pray, calls for support. It is designed to destroy free conference calling and other dial-in applications. Worse yet, T-Mobile has deceived the public about the existence of this program and the reasons it was put in place. T-Mobile has remained the outlier in this discriminatory pricing policy – despite implementing it for nearly two and half years, no other mobile, fixed, or cable telecommunications provider has followed suit.

I am greatly concerned that a merger of T-Mobile and Sprint may proliferate this anticompetitive practice across the new, combined company. While FreeConferenceCall.com is agnostic about the merits of the merger itself, the negative market effects of the "Out-of-Plan Program" deserve the scrutiny of the House Judiciary Committee.

T-Mobile's discriminatory pricing program quietly launched in October 2016, with the sole intent of stopping its subscribers from making calls to certain domestic telephone numbers. This T-Mobile pricing program indirectly targets immigrants, religious groups, non-profit organizations, federal, state, and local government agencies, and small business owners that rely upon the "unlimited" calling plans T-Mobile marketed to them. After deceiving the public into purchasing unlimited wireless plans, and in some cases long-term contracts, T-Mobile instituted a policy to start charging an additional \$.01 per minute for calls to a select number of free calling applications.

The ongoing, nebulous T-Mobile incremental pricing policy creates a category of telephone numbers that T-Mobile deems as "out-of-plan numbers." When a T-Mobile unlimited subscriber calls a telephone number that T-Mobile has deemed "out-of-plan", T-Mobile interrupts the call with a recorded message, notifying the caller that they are calling a telephone number that is "out-of-plan" and that an extra charge of one cent per minute will be incurred. The message then encourages the caller to avoid the charge by "hanging up." This is what occurs for the T-Mobile subscriber who purchased a post-paid plan, paying a monthly fee for unlimited domestic long distance calls. T-Mobile subscribers who purchase pre-pay plans, who tend to be consumers with far less credit and typically poorer than post-paid consumers,



hear a different message. Those subscribers are notified that the call cannot be completed unless the subscriber purchases an additional special plan at a substantially higher monthly cost. The call is then disconnected.

The first time a T-Mobile subscriber learns of this policy is usually when they are trying to make a call. There is no list of "out-of-plan" numbers publicly available or even provided upon request. T-Mobile customer service representatives have informed its subscribers that "the list of out-of-plan numbers can change on a daily basis" and that the only way to know for sure if a fee will be assessed is if the interrupting message is played. The interrupting message is the lynchpin of the program because it causes the consumer, who is likely financing the purchase of a cell phone via contractual payments and not expecting any additional charges to be assessed, to hang up.

The little information T-Mobile provides to the public about this policy is false and misleading. Immediately before the launch of the "Out-of-Plan Program" T-Mobile updated its Terms and Conditions to vaguely allude to the fact that T-Mobile could charge a subscriber extra for "certain calls" without any detail or explanation as to when and why. The "FAQ" webpage on T-Mobile's website claims that calls to certain telephone numbers have always been considered as "out-of-plan." This is not true, as the Terms and Conditions were updated only the month before the creation of this "out-of-plan" concept.

T-Mobile's website also claims that calls to out-of-plan numbers, which it describes as calls to "services like chat lines, conference calls and radio broadcast lines," tend to cost more for T-Mobile to complete. This assertion is greatly misleading. Given the economy of intercarrier compensation designed and governed by the FCC, every single call a T-Mobile customer makes outside the T-Mobile network will require T-Mobile to pay a per-minute charge to terminate the call. Thus, the more calls a customer makes under an "unlimited plan", in its own estimation the less profitable T-Mobile is on that customer.

The "Out-Of-Plan Program" is discriminatory in its design and the harm is two-fold. The telephone numbers that T-Mobile considers to be "Out-of-Plan" are those associated with a select number of successful businesses that run content-oriented or free conferencing applications, such as FreeConferenceCall.com. These applications partner (in many cases) with local phone companies to connect calls to the applications. The "Out-of-Plan Program" greatly harms these businesses and the phone companies who rely upon the revenue derived from connecting these calls. By some measures the volume of T-Mobile calls has been reduced by over 50% to these phone companies and the businesses running the conferencing and other applications. It is noteworthy that T-Mobile designates a number to be "Out-of-Plan" based on the type of application being called and the company providing the application. For example, a conference call using FreeConferenceCall.com is "Out-of-Plan" whereas a conference call using AT&T or Verizon or Webex conferencing are not "Out-of-Plan", even when the conference call access numbers for all of these services are from the identical area codes. Audaciously, T-Mobile will remove a number from the "Out-of-Plan" designation if the targeted application moves to host its services with one of T-Mobile's strategic telecommunications hosting partners. T-Mobile is therefore using consumer pricing to determine which applications should live or die, and which application hosting companies should thrive.

The harm to the public and the organizations that rely on the applications T-Mobile has targeted is staggering. For example, many different churches and religious organizations use FreeConferenceCall.com to hold daily or weekly prayer sermons to followers around the world. Prayer



calls have all but stopped as a result of the T-Mobile "Out-of-Plan Program" because the extra charge has greatly deterred participation. Grassroots organizations across the political spectrum cannot coalesce remotely the ways they once did. Political campaigns, government agencies, and most notably small businesses have lost a vital tool to communicate. The discriminatory nature of T-Mobile's program is evident in the harm it causes to dial-up radio broadcast applications as well. These applications are extremely popular with immigrants who rely upon these applications for news and information from their native country. As has been the case recently with crises in Haiti, dial-up radio was the mainstream source for Haitians in the diaspora to understand events impacting their families. Because T-Mobile's pricing program targets calls to these very applications, immigrants no longer have the access to the information they seek.

Finally, T-Mobile has used the discriminatory pricing program as a tool to coerce favorable business deals. T-Mobile knows the devastation that befalls a business or organization when its telephone numbers deemed "Out-of-Plan." It uses the program as a carrot, coercing local phone companies hosting such applications to enter into direct deals with T-Mobile on terms most favorable to T-Mobile in order to be exempted from the "Out-of-Plan Program."

I appreciate the Subcommittee's consideration of this very important matter that currently affects millions of consumers. The "Out-of-Plan Program" is as devastating to FreeConferenceCall.com and its employees, as it is to other targeted companies and applications. If the proposed merger is approved, this discriminatory pricing policy will likely spread to the "New T-Mobile," and directly impact the 54 million Americans who currently subscribe to Sprint's services. Should the program become the policy of the "New T-Mobile," its damage will become more widespread. I submit that it is critical that the Subcommittee consider and attempt to offer remedy to current pricing practices that, if not rectified, can truly hurt economic growth, productivity, and even the freedom of Americans to assemble.

If you, or other Members of the Judiciary Committee or the Subcommittee on Antitrust, Commercial, and Administrative Law have additional questions or need additional information on this important topic, I stand ready to assist in any way that I can.

Sincerely,

A handwritten signature in black ink, appearing to be "D. Erickson", written over a horizontal line.

David Erickson
Founder and CEO